

[REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code.

You were incorporated [REDACTED] under the laws of the state of [REDACTED]. Your purposes, as stated in your articles of incorporation, are exclusively charitable. You have one director, [REDACTED], who by virtue of his position has complete control of your activities and finances. He will be compensated by you at the rate of \$[REDACTED] per year in [REDACTED] and \$[REDACTED] per year in [REDACTED]. You have refused to expand your board of directors to include a majority of persons representative of the community you propose to serve and unrelated to [REDACTED].

In your application, you have described your proposed activities as monitoring and reporting on the destruction of trees and other natural resources in the [REDACTED] metropolitan area ([REDACTED]% of time and resources), seeking voluntary conservation measures by the entities responsible for the destruction of trees and other natural resources ([REDACTED]% of time and resources), fundraising ([REDACTED]% of time and resources), seeking the enactment of conservation statutes and ordinances designed to reduce the destruction of trees and other natural resources ([REDACTED]% of time and resources), and seeking the identification, purchase, and possession of tracts of land in order to prevent the destruction of trees and other natural resources ([REDACTED]% of time and resources). You have also stated that you will spend [REDACTED]% of your funds in purchasing stock of corporations responsible for the destruction of trees and other natural resources, in an attempt to influence the decisions of those corporations.

In your application, you state that you anticipate your fund raising program will include targeted mailings, in-person solicitations, and the use of fund-raising booths at outdoor festivals. You state that all fund-raising will be performed by [REDACTED], other employees, or volunteers. Your proposed budgets project expenditures for fund-raising costs of \$[REDACTED] (in [REDACTED]) and \$[REDACTED] (in [REDACTED]).

[REDACTED]

These same budgets include similar amounts to be paid to employees other than [REDACTED]. In your letter of [REDACTED] you state that you have no present or proposed compensated individuals other than [REDACTED], and that you have no past, present, or proposed efforts to recruit volunteers.

When asked to identify the criteria you will use in determining whether to purchase land, you listed the location, the threat to the land, the trees and natural resources contained thereon, and the cost. You stated that you believe that all land is environmentally significant. You have also stated that the specific use of any purchased tract of land will not be determined until the particular tract is purchased.

Section 501(c)(3) of the Internal Revenue Code describes, in relevant part, corporations organized and operated exclusively for charitable or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations provides that an organization will be regarded as 'operated exclusively' for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(2) of the regulations provides, in relevant part, that the term 'charitable' is used in section 501(c)(3) in its generally accepted legal sense.

Rev. Rul. 76-204, 1976-1 C.B. 152, describes a nonprofit organization formed by scientists, educators, conservationists, and representatives of the community-at-large for the purpose of preserving the natural environment by acquiring, by gift or purchase, ecologically significant undeveloped land, and either maintaining the land itself with limited public access or transferring the land to a government conservation agency by outright gift or being reimbursed by the agency for its cost and concludes that it qualifies for exemption under section 501(c)(3) of the Code.

Rev. Rul. 78-384, 1978-2 C.B. 174, describes a nonprofit organization that owns farmland and restricts its use to farming or other uses the organization deems ecologically suitable, but is not operated for the purpose of preserving ecologically significant land. Although the organization restricts its land to uses that do not change the environment, it is not preserving land that has any distinctive ecological significance within the meaning of Rev. Rul. 76-204. In addition, any benefit to the public from this organization's self-imposed restriction on its own land is too indirect and insignificant to establish that the organization serves a charitable purpose within the meaning of section 1.501(c)(3)-1(d)(2) of the regulations. Since the organization does not otherwise

[REDACTED]

establish that it serves a charitable purpose, it does not qualify for exemption under section 501(c)(3) of the Code.

You differ from the organization described in Rev. Rul. 76-204 in three important respects. First, you were not formed by scientists, educators, conservationists, and representatives of the community. Rather, you were formed, and are controlled by, a single individual who has not demonstrated any particular knowledge or expertise with respect to environmental preservation. Second, you have stated that you believe that all land is environmentally significant. Thus, we cannot conclude that you will be protecting or preserving land that has any distinctive ecological significance. In this respect, you more closely resemble the organization described in Rev. Rul. 78-384. Third, you have declined to specify what use you will make of any land you may purchase. We are therefore unable to conclude that your acquisition or use of the land will further any exempt purpose.

Similarly, your activities other than land acquisition cannot be held to further an exempt purpose. Legislative activities do not in and of themselves further an exempt purpose. See section 1.501(c)(3)-1(c)(3) of the regulations. Any benefit to the public from your monitoring and reporting on the destruction of trees and other natural resources or seeking voluntary conservation measures by the entities responsible for the destruction of trees and other natural resources is too indirect and insignificant to establish that you serve a charitable purpose within the meaning of section 1.501(c)(3)-1(d)(2) of the regulations, absent a showing that ecologically significant land and resources will thus be preserved.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

In *Better Business Bureau of Washington, D.C., Inc. v. United States*, 326 U.S. 279, the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

In *Founding Church of Scientology v. United States*, 412 F.2d 1197 (Cl. Ct. 1969), cert. denied, 397 U.S. 1009 (1970), the Claims Court held that a private party's ability to dictate the amount of its compensation may be unreasonable private benefit in and of itself, even where the private party pays itself a reasonable amount.

[REDACTED]

In *Church By Mail, Inc., v. Commissioner*, 765 F.2d 1387 (9th Cir. 1985), the Court Of Appeals affirmed a decision of the Tax Court denying the organization exempt status under section 501(c)(3) of the Code. The Tax Court held that the Church was operated for the non-exempt purpose of providing a market for the services of a related for-profit corporation, and that a substantial, if not principal, purpose of the Church's operations was to generate income for the private benefit of Reverend Ewing and Reverend McElrath, the persons controlling the church and the for-profit corporation, and their respective families. The Court of Appeals stated:

The critical inquiry is not whether particular contractual payments to a related for-profit organization are reasonable or excessive, but instead whether the entire enterprise is carried on in such a manner that the for-profit organization benefits substantially from the operation.

Even if we could conclude that your activities further an exempt purpose, you appear to have a substantial nonexempt purpose. You have refused to change the composition of your board of directors to include a majority of persons who are unrelated. This is an indication of unreasonable private benefit and potential for abuse. See *Founding Church of Scientology v. United States*. You have not demonstrated that you serve a public interest, rather than the private interests of the individual who controls you. See section 1.501(c)(3)-1(d)(1)(ii) of the regulations.

You have argued that the compensation you proposed to pay [REDACTED] is reasonable compensation for his services. First, in view of your conflicting statements as to the identities of persons to be compensated as outlined in the fourth paragraph of this letter, we are unable to determine what [REDACTED] compensation will be. Second, you have not established that compensation to be paid to [REDACTED] is in fact reasonable. The reasonableness of compensation depends as much on the duties to be performed as it does on the educational background of the individual being compensated. You have not established that [REDACTED] has any particular expertise in conservation matters or the management of nonprofit organizations. Third, with no oversight of [REDACTED] activities by any other person, there is no basis for concluding that any compensation paid will be reasonable in light of services actually performed. Finally, as stated in *Church by Mail*, reasonableness is not the critical inquiry here. Rather, it is whether the entire enterprise is carried on in such a manner that a private individual benefits substantially from the operation. Clearly, [REDACTED] will benefit substantially from your activities.

Accordingly, based on all the facts and circumstances, we conclude that you do not qualify for recognition of exemption under section 501(c)(3) of the Code. Contributions to you are not deductible under section 170 and you are required to file federal income tax returns.

NO PROTEST RECEIVED
Release copies to District

-5-

Date [REDACTED]

Surname [REDACTED]

[REDACTED]

You have the right to protest this ruling if you believe that it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement must be submitted within 30 days of the date of this letter and must be signed by one of your officers. You also have a right to a conference in this office after your statement is submitted. If you want a conference, you must request it when you file your protest statement. If you are to be represented by someone who is not one of your officers, he/she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements.

If you do not protest this proposed ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key District Director. Thereafter, any questions about your federal income tax status should be addressed to that office. The appropriate State officials will be notified of this action in accordance with section 6104(c) of the Code.

You will expedite our receipt of your reply by using the following address on the envelope:

[REDACTED]

Sincerely yours,

[REDACTED]
Chief, Exempt Organizations
[REDACTED]

Code
Surname
Date

[REDACTED]